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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,480	11/25/2003	Jeffrey Breslow	06181-062001	4363
26171	7590	01/26/2006	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			CHIU, RALEIGH W	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/720,480

Applicant(s)

BRESLOW ET AL.

Examiner

Raleigh Chiu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,8-13 and 21-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-28 is/are allowed.
- 6) ☒ Claim(s) 1-4,8-13,29,30 and 35-37 is/are rejected.
- 7) ☒ Claim(s) 21,22 and 31-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Objections***

1. It is assumed that claim 13 depends from claim 11.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 2, 8-11, 29, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolwicz (USPN 3,368,814) in view of Kelly (USPN 5,769,424) and U.S. Patent Number 5,577,733 (Downing).

Regarding claims 1, 2, 8-11, 29, 35 and 37, Figure 1 of Kolwicz shows a base unit 1, target area 3 and launch area 2. Figure 1 further shows that a playing piece is inherently capable of being bounced into one of the target sections. Figures 2 and 4 show actuators 25 to indicate scoring but do not show an electronic controller. However, it would have been obvious to one of ordinary skill in the art to employ an electronic controller in combination with the Kolwicz targets in view of Kelly who teaches that it is old and well-known in the gaming art to monitor balls, targets and overall game play with electronic controllers. See Kelly's sensor 92 and

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microprocessor 132 at Figures 3a-4 and column 10, line 4 through column 12, line 48. Regarding the ball detecting system, Kelly discloses that the use of optical detectors as ball detectors is old and well-known in the gaming art. See column 7, lines 34-60. Although Kelly does not explicitly recite an optical detection system with a single emitter in combination with a plurality of optical detectors, because Downing teaches that these two types of detecting systems were art-recognized equivalents at the time of the invention in those applications where it is immaterial how the ball is detected as it passes through a target hole, one of ordinary skill in the art would have found it obvious to substitute one well-known optical detecting system for another. See Downing at Figure 3 and Figure 18.

With further regard to claim 29, base 15 of Kolwicz corresponds to the recited passage common to the target holes.

Regarding the amendment to claims 1 and 11, Kolwicz shows the target area having three apertures 22,23,24 in three target sections (defined by barriers 19,20,21). See Figures 1-2.

Applicant argues that the references fail to describe or suggest an optical detection system that detects which one of multiple, separate apertures a playing piece passed through and that they fail to describe or suggest a means for detecting

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which one of multiple, separate apertures a playing piece passed through. The test for obviousness is not whether the features may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

Regarding the optical detection system, one of ordinary skill in the art would have recognized the necessity of having any optical detection system being able to detect which aperture the playing pieces passes through as a minimum threshold as a practical detector. The conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art.

4. Claims 3, 12 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolwicz in view of Kelly, Downing and Johns (USPN 2,926,915).

Regarding claims 3, 12 and 30, Johns shows in Figure 1 that targets 17,18 are well-known in the art can be formed as concentric, upstanding, circular walls. Because the Kolwicz and Johns targets were art-recognized equivalents at the time of the invention as ballgame targets, one of ordinary skill in the art

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would have found it obvious to substitute one well-known target for another.

5. Claims 4, 13 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolwicz, Kelly and Downing as applied above in view of Dixon (USPN 5,031,919).

Regarding claims 4, 13 and 36, Kolwicz discloses that his game can be played indoors or outdoors, and is applicable for home use as well as for commercial use but does not explicitly describe table-top use. See column 1, lines 21-27. However, it would have been obvious to one of ordinary skill in the art to size the Kolwicz game for table-top play in view of Dixon who teaches that it is old and well-known in the arcade game art to miniaturize traditional arcade games to allow for game portability and home use. See Dixon at column 1, lines 5-22 and 41-47.

***Allowable Subject Matter***

6. Claims 21, 22 and 31-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 23-28 are allowed.

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***Response to Arguments***

8. Applicant's arguments filed 14 November 2005 have been fully considered but they are not persuasive as discussed above.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

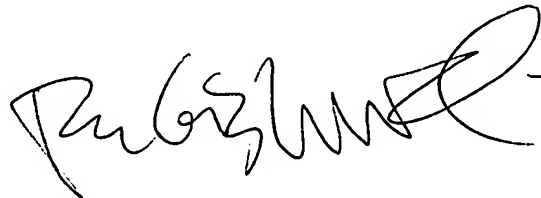
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (571) 272-4408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim, can be reached on (571) 272-4463.

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The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Chiu', with a stylized flourish at the end.

Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700

RWC:dei:feif  
19 January 2006